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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,392	04/19/2004	Kenneth G. McKee	2617U.001	4828
21917	7590	09/15/2004	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			NICOLAS, FREDERICK C	
		ART UNIT	PAPER NUMBER	
			3754	
DATE MAILED: 09/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	JU
	10/828,392	MCKEE, KENNETH G.	
	Examiner	Art Unit	
	Frederick C. Nicolas	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 April 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-12 and 14-16 is/are rejected.
 7) Claim(s) 13 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6,11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray 5,248,071.

Ray discloses a sealing cap (100) for a caulking tube nozzle (80) which comprises a body member having a solid top portion and a depending annular wall as seen in Figure 2, the solid top portion and the annular wall forming an inner cavity (102), the inner cavity including a caulking tube tip engagement means and at least one sealing means (col. 4, ll. 29-68), wherein the engagement means cooperates with the caulking tube tip to provide compressive engagement between the at least one sealing means and the caulking tube tip thereby preventing air from entering the caulking tube (col. 5, ll. 1-19), the caulking tube tip engagement means includes internal helical threads (114, 112, 110), wherein the helical internal threads are constructed and arranged to cooperate with the caulking tube tip to allow the sealing cap and the caulking tube tip to be interlocked in an axial relationship as seen in Figure 3.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray 5,248,071 in view of McIntosh 4,307,821.

Ray has taught all the features of the claimed invention except that the outer surface includes a gripping means constructed and arranged to provide gripping for rotational engagement between the caulking tube tip and the sealing cap. McIntosh teaches the use of cap (30) having a gripping means (40) on the outer surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize McIntosh's teaching onto Ray's cap outer surface by providing a knurled external finish as taught by McIntosh in (col. 3, II. 6-8), in order to facilitate gripping and rotation of the cap by the user.

5. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray 5,248,071 in view of Hammes 3,480,169.

Ray has taught all the features of the claimed invention except that the at least one sealing means includes an o-ring. Hammes teaches the use of a cap (2a'') having an at least one sealing means (10) within the internal cavity of the cap as seen in Figure 2.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Hammes' at least one sealing means within Ray's cap, in order to provide a tight seal therewith when the cap is threaded onto the neck, as taught by Hammes in (col. 3, II. 29-40).

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray 5,248,071 in view of Oshida et al. 5,552,047.

Ray has taught all the features of the claimed invention except that the sealing ring comprises an elastomeric ring. Oshida et al. teach the use of a cap (9) having an elastomeric ring (17).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the elastomeric ring (17) within Ray's cap as taught by Oshida et al. in (col. 3, ll. 29-34), in order to provide a fluid-tight seal.

Allowable Subject Matter

7. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hawley 5,104,013, Lee 4,284,213, Reed 2,815,895, Merhar 5,447,245, James 5,020,702, Cermak, III 6,481,587, Larson 5,154,308, Summons et al. 4,863,014, Summers 4,111,331, Vadnais 4,546,906 and Schumann et al. 3,439,839 disclose other types of sealing cap for a caulking tube.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
September 12, 2004



9/12/04
Frederick C. Nicolas
Patent Examiner
Art Unit 3754